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April 19, 2016

**VIA EMAIL AND FIRST CLASS MAIL**

Eric Schaaf, Esq.  
Regional Counsel  
US Environmental Protection Agency, Region 2  
290 Broadway  
New York, NY 10007-1866

**Re: Diamond Alkali Superfund Site/Lower Passaic River/Request  
for De Micromis Settlement on behalf of Three County  
Volkswagen, Teva Pharmaceuticals USA, Inc., Goody  
Products, Inc. and Berol Corporation**

Dear Eric:

This letter is a follow up to our recent telephone conversations during which I requested a meeting to secure a de micromis settlement for my client Three County Volkswagen, Gail Port's (Proskauer) client Teva Pharmaceuticals USA ("Teva"), and Andrew Sawula's (Schiff Hardin) clients Goody Products, Inc. ("Goody") and Berol Corporation ("Berol") (both subsidiaries of Newell Brands Inc., f/k/a Newell Rubbermaid Inc.) (Three County Volkswagen, Teva, Goody and Berol, collectively, the De Micromis Parties). As I explained in our conversations, these parties have had very little, if any, connection to the Lower Passaic River contamination issues and each meets the requirements for a de micromis settlement set forth in USEPA's Revised Settlement Policy and Contribution Waiver Language Regarding Exempt De Micromis and Non-Exempt De Micromis Parties (November 6, 2002).

You explained in our most recent conversation that since the Record of Decision ("ROD") was recently issued, EPA has commenced the development of a settlement process. We would like to ensure that our clients, the De Micromis Parties, are included in the early stages of that process. The De Micromis Parties have already each spent many hundreds of thousands of dollars in administrative costs and on the Remedial Investigation and Feasibility Study being undertaken by the Cooperating Parties Group ("CPG"). Those costs and expenditures by far

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exceed and are in gross disproportion to the amount of the De Micromis Parties' respective potential liability (if any) for the Lower Passaic River.

Rather than providing a detailed demonstration in this letter that our clients are, indeed, de micromis parties eligible for a de micromis settlement under the CERCLA Section 107(o)(1) exemption and/or the November 6, 2002 Revised Settlement Policy, Gail, Andy, and I are prepared to meet in person with you (and your EPA colleagues involved in the de micromis settlement process) to present the facts concerning our respective clients and their site histories along with an analysis of their status as de micromis. That being said, here is some background about each of our clients to assist you in making your decision to meet with us as soon as possible and certainly early in the settlement process.

*Three County Volkswagen* is a car dealership. Between the years 1966 and 1972, a pipe carried car wash water from the wash bay, through five separators, and then to the River. In 1972, samples of the wash water were taken before the water had passed through the separators and into the pipeline. The sample results did not identify any of the LPRSA contaminants of concern, any petroleum products, or any hazardous substances whatsoever in the wash water. Nevertheless, the pipe was decommissioned in 1972. The only other activity at the property that resulted in an environmental sampling report was in June 1992, when Three County Volkswagen undertook an underground storage tank upgrade in accordance with state requirements. Soil samples were taken during the excavation and decommissioning process for the five USTs on the property. The analysis of the June 1992 samples showed metals, which are naturally occurring in the environment in the area, phthalates (a common laboratory artifact associated with laboratory plasticware), and methylene chloride (a common laboratory cleaning agent that was also detected in the laboratory blank sample). This sampling event did not demonstrate that there was petroleum or hazardous substance contamination on the Three County Volkswagen property, much less that any such substances had ever migrated off the property. There are no other reports or information concerning potential environmental issues at the Three County Volkswagen property.

Teva's (formerly Biocraft's) facility in Waldwick, NJ manufactured semi-synthetic penicillin products in bulk form from 1972 to 1997. In 1975 a leak was discovered in an underground transfer pipe transporting dilute wastewater containing acetone, methylene chloride, n-butyl alcohol, dimethyl aniline and water, which was believed to have released via an adjacent storm sewer line to the Allendale Brook (located on a remote tributary some 14 or so miles from the Lower Passaic River). The source of the discharge was removed, groundwater was extensively investigated and remediated (via a sophisticated biostimulation/bioremediation system over a period of time) and hydraulic control of the groundwater was maintained on-site to prevent off-site migration, all under the oversight of the New Jersey Department of Environmental Protection (NJDEP), culminating in the issuance of an NJDEP no further action determination in 2004. Surface water and sediment sampling confirmed no elevated impacts to the Allendale Brook. The travel path from the facility's stormwater outfall is through several brooks and ponds (*i.e.*, the Allendale Brook, Ho-Ho-Kus Brook, White's Pond and Cole's Pond)

and a water fall before meandering several miles along the Saddle River, a total distance of approximately 14.4 miles from the facility's stormwater drain to the confluence of the Saddle River and the Lower Passaic River. Given that all of the constituents of concern from the leak were volatile organic compounds which do not adsorb strongly to soil--if any even made it to the Lower Passaic River--they would have significantly degraded during the long journey and the passage of approximately 40 years from the discovery of the release so as not to have impacted the Lower Passaic River at all and certainly would never have impacted the River sediments which are the subject of the ROD remedy. There were also two minor releases of hydrochloric acid at the facility in 1993 and 1994, both of which were addressed promptly and received no further action determinations from NJDEP.

*Goody* manufactured hair care accessories at a facility located at 969 Newark Turnpike, Kearny, NJ<sup>1</sup> from approximately 1969 – 1994. NJDEP issued a Conditional No Further Action Letter for the site in 2012. *Goody* did not use or discharge any dioxins, PCBs, or mercury at or from this facility, and its analysis demonstrates that it is unlikely that any hazardous substances released from its operations ever reached the Passaic River. As *Goody* understands it, the alleged nexus to the Passaic is that hazardous substances were released from the facility to the Dead Horse Creek, which flows to Franks Creek, which in turn flows to the Passaic.<sup>2</sup> But that is grounded on a simple error: There are two creeks in Kearny with the name “Dead Horse Creek,” and the one that discharges to Franks Creek is over one mile from the former *Goody* facility. The creek at the former *Goody* facility was in essence a stagnant, vegetated ditch running the length of the property's western boundary. To reach the Passaic, water leaving the site would have to travel uphill through a 12-inch concrete reinforced pipe culvert with a nearly five-foot inversion, which would be possible, even theoretically, only under very specific hydraulic conditions. Any water completing that unlikely journey would then have to flow over one mile through a series of expansive wetlands and marshes, creeks and culverts, to a pumping station (or during certain conditions, a gravity outlet) discharging to the Passaic. The culverts (including the inverted culvert connecting to the creek) were frequently clogged, and the pumping station had chronic operational issues. Moreover, *Goody's* analysis has revealed substantial attenuation of contaminants on-site, and enormous potential for additional attenuation of contaminants from any water that may have ever flowed off-site. Consequently, it is unlikely that any hazardous substances allegedly released through its operations ever reached the Passaic River.

*Berol* is the successor by merger to Faber-Castell Corporation (“Faber”), which operated a manufacturing facility at 41 Dickerson St, Newark, NJ between 1919 and 1996. In the early decades, Faber manufactured rubber bands and erasers at the facility. Over the years, Faber's manufacturing included other rubber and vinyl products, inks, and paint. NJDEP issued a No

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<sup>1</sup> EPA issued a September 15, 2003 General Notice Letter to *Goody's* parent, Newell Brands Inc. (f/k/a Newell Rubbermaid Inc.), but not to *Goody*, based upon alleged discharges from *Goody's* operations at this facility to the Lower Passaic River.

<sup>2</sup> Both the 1973 PVSC Annual Report (which *Goody* understands may have informed USEPA's nexus assessment) and *Tierra* and *Maxus's* allegations in the now-resolved state litigation describe the “Dead Horse Creek” as a tributary of Franks Creek.

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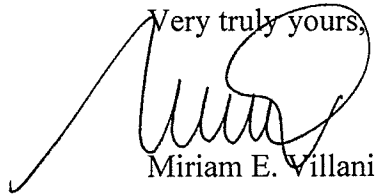
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Further Action letter for the site in 2000. Faber did not use or discharge any dioxins, PCBs, or mercury at or from this facility. Its industrial wastewater discharges were limited to steam condensation, boiler blowdown, and contact and non-contact cooling water. Other than sanitary waste, no solids were discharged with Faber's wastewater. The alleged nexus to the Passaic River is via the sewer system. Berol has seen no evidence confirming any connection between its facility and the Passaic prior to the completion of the Passaic Valley Sewerage Commission ("PVSC") interceptor pipe in 1924. Since then, any discharges from the facility to the PVSC sewer system would have been treated at the PVSC treatment plant or, during certain conditions, allegedly discharged directly to the Passaic via the Clay Street Combined Sewer Overflow ("CSO"). Notably, wastewater discharges from the facility were so low that, at the most, Berol believes they contributed only a fraction of 1% of the flow through the Clay Street CSO to the Passaic River.

Your consideration of this request for a meeting is greatly appreciated. Gail, Andy and I look forward to your response and to working with you and EPA to resolve these matters.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Miriam E. Villani', is written over the typed name. The signature is fluid and cursive, with a large loop at the end.

Miriam E. Villani

cc: Gail S. Port, Esq.  
Andrew N. Sawula, Esq.